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Attorneys for Plaintiff  
**SAUL REYES**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SAUL REYES, on behalf of himself and all others similarly situated,

*Plaintiff,*

V.

**FEDERAL EXPRESS CORPORATION**, a Delaware corporation; and DOES 1 through 50, inclusive.

### *Defendants.*

Case No. 3:23-cv-00693-TLT

Assigned For All Purposes to the Honorable  
Trina L. Thompson, Courtroom 9

## **CLASS ACTION**

## **FIRST AMENDED COMPLAINT FOR**

1. Failure to Indemnify (Lab. Code § 2802);
  2. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*).

## JURY TRIAL DEMANDED

1 Plaintiff SAUL REYES (“Plaintiff”), on behalf of himself and all others similarly situated,  
 2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against defendants FEDERAL EXPRESS  
 5 CORPORATION, a Delaware corporation; and DOES 1 through 50, inclusive, (collectively  
 6 referred to as “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff  
 7 alleges that Defendants have failed to reimburse them for all necessary business expenses.

8 Based on these alleged violations, Plaintiff now brings this class action to recover  
 9 restitution and related relief on behalf of himself and all others similarly situated.

10 **JURISDICTION AND VENUE**

11 2. The Superior Court of the County of San Francisco has subject matter jurisdiction to  
 12 hear this case because the unpaid wages, actual damages, liquidated damages, restitution, and  
 13 penalties sought by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior  
 14 Court of the State of California.

15 3. Venue is proper in the County of San Francisco pursuant to Code of Civil Procedure  
 16 sections 395(a) and 395.5 in that liability arose there, because at least some of the transactions that  
 17 are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains  
 18 offices, transacts business, and/or has an agent therein.

19 4. Defendant FEDERAL EXPRESS CORPORATION removed this Action to this  
 20 Court pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453,  
 21 and 1711.

22 **PARTIES**

23 5. Plaintiff is and was, and at all relevant times mentioned herein, an individual  
 24 residing in the State of California.

25 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant FEDERAL  
 26 EXPRESS CORPORATION is, and at all relevant times mentioned herein, a Delaware corporation  
 27 doing business in the State of California.

28 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as

1 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.  
 2 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants  
 3 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the  
 4 fictitiously named defendants are responsible in some manner for the occurrences, acts and  
 5 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these  
 6 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and  
 7 capacities of the DOE defendants when ascertained.

8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times  
 9 mentioned herein, some or all of the defendants were the representatives, agents, employees,  
 10 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some  
 11 or all of the other defendants, and, in doing the things alleged herein, were acting within the course  
 12 and scope of such relationship and with the full knowledge, consent, and ratification by such other  
 13 defendants.

#### CLASS ALLEGATIONS

15. This action has been brought and may be maintained as a class action pursuant to  
 16 Code of Civil Procedure section 382, because there is a well-defined community of interest among  
 17 the persons who comprise the readily ascertainable classes defined below and because Plaintiff is  
 18 unaware of any difficulties likely to be encountered in managing this case as a class action.

19. **Relevant Time Period:** The relevant time period is defined as the time period  
 20 beginning four years prior to the filing of this action until judgment is entered.

21. **Expense Reimbursement Class:** All persons employed by Defendants in California  
 22 who incurred business expenses using personal cellphones during the **Relevant Time  
 Period**, excluding those persons whose claims have been released.

23. **UCL Class:** All **Expense Reimbursement Class** members employed by Defendants  
 24 in California during the **Relevant Time Period**.

25. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the  
 26 right to amend or modify the class definitions with greater specificity by further division into sub-  
 27 classes and/or by limitation to particular issues.

28. **Numerosity:** The class members are so numerous that the individual joinder of each

1 individual class member is impractical. While Plaintiff does not currently know the exact number of  
 2 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number  
 3 exceeds the minimum required for numerosity under California law.

4       13.     **Commonality and Predominance:** Common questions of law and fact exist as to all  
 5 class members and predominate over any questions that affect only individual class members. These  
 6 common questions include, but are not limited to:

- 7           i.    Whether Defendants failed to reimburse class members for all necessary business  
 8              expenses incurred during the discharge of their duties;
- 9           ii.    Whether class members are entitled to restitution of money or property that  
 10             Defendants may have acquired from them through unfair competition;

11       14.     **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff  
 12 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing  
 13 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

14       15.     **Adequacy of Class Representative:** Plaintiff is an adequate class representative in  
 15 that he has no interests that are adverse to or otherwise conflict with the interests of absent class  
 16 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly  
 17 and adequately represent and protect the interests of the other class members.

18       16.     **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that  
 19 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in  
 20 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on  
 21 behalf of Plaintiff and absent class members.

22       17.     **Superiority:** A class action is vastly superior to other available means for fair and  
 23 efficient adjudication of the class members' claims and would be beneficial to the parties and the  
 24 Court. Class action treatment will allow a number of similarly situated persons to prosecute their  
 25 common claims simultaneously and efficiently in a single forum without the unnecessary  
 26 duplication of effort and expense that numerous individual actions would entail. In addition, the  
 27 monetary amounts due to many individual class members are likely to be relatively small and would  
 28 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.

1 Moreover, a class action will serve an important public interest by permitting class members to  
 2 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the  
 3 potential for inconsistent or contradictory judgments inherent in individual litigation.

4 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 18. Plaintiff worked for Defendants as an hourly, non-exempt employee from  
 6 approximately March 2019 through September 2020.

7 **Expense Reimbursement**

8 19. During the relevant time period, Plaintiff and the putative class members were  
 9 required to utilize their own personal cell phones to perform their job duties, including but not  
 10 limited to navigation and communications with supervisors, dispatch, and customers.

11 20. Defendants did not provide Plaintiff and the putative class with business phones or  
 12 radios, and the only way Defendants could reach Plaintiff and the putative class while on route was  
 13 through personal cell phones.

14 21. During the relevant time period, when Plaintiff worked on Saturdays, he would have  
 15 a different route from his typically scheduled route and would need to use his phone to navigate.

16 22. Defendants would sometimes, but not always, provide Plaintiff with a printout  
 17 showing the stops on his route if he specifically asked for it. The printout would consist of a  
 18 zoomed in map of the service area with numbered dots at each of the stops but without turn by turn  
 19 instructions.

20 23. During Plaintiff's training, when he brought up the difficulties of using the printout  
 21 to navigate as it was difficult to make out the streets, he was told by the person training him that he  
 22 should just navigate with his phone.

23 24. Defendants knew or had reason to know of the aforementioned expenditures.  
 24 Defendants personally contacted Plaintiff and putative class members on their cell phones through  
 25 supervisors and dispatch, and sometimes customers would be patched through to him if there were  
 26 any issues with the delivery or scan.

27 25. Defendants failed to reimburse Plaintiff and the putative class for such necessary  
 28 business expenses incurred by them. Plaintiff and putative class members were not informed that

1 they could request reimbursement from Defendants for these expenditures and were never informed  
 2 of any policy that would reimburse them for the use of their personal cellphones for business-related  
 3 purposes.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO INDEMNIFY**

6 **(Lab. Code § 2802)**

7 **(Plaintiff and Expense Reimbursement Class)**

8 26. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

9 27. Labor Code section 2802(a) states:

10 An employer shall indemnify his or her employee for all necessary expenditures or  
 11 losses incurred by the employee in direct consequence of the discharge of his or her  
 12 duties, or of his or her obedience to the directions of the employer, even though  
 13 unlawful, unless the employee, at the time of obeying the directions, believed them to  
 14 be unlawful.

15 28. At all relevant times during the applicable limitations period, Plaintiff and the

16 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,  
 17 including but not limited to, usage of their personal cellphones in the discharge of their duties.

18 29. At all relevant times during the applicable limitations period, Defendants required  
 19 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused  
 20 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**  
**Reimbursement Class** members for all such expenditures.

21 30. Plaintiff is informed and believes that, during the applicable limitations period,  
 22 Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense**  
**Reimbursement Class** members for all necessary business expenses.

23 31. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to  
 24 restitution for all unpaid amounts due and owing within four years of the date of the filing of the  
 25 original Complaint and until the date of entry of judgment.

26 32. Plaintiff, on behalf of himself , and **Expense Reimbursement Class** members, seeks  
 27 interest thereon and costs pursuant to Labor Code section 218.6 and reasonable attorneys' fees  
 28 pursuant to Code of Civil Procedure section 1021.5.

## **SECOND CAUSE OF ACTION**

## **UNFAIR COMPETITION**

**(Bus. & Prof. Code §§ 17200 *et seq.*)**

**(Plaintiff and UCL Class)**

33. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

34. Business and Professions Code section 17200 defines “unfair competition” to  
be any unlawful business practice.

35. Business and Professions Code sections 17203–17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

36. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonably should know that employees have worked.

37. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and incorporates the FIRST cause of action herein.

38. Plaintiff lost money and/or property as a result of the aforementioned unfair competition.

39 Defendants have or may have acquired money by means of unfair competition.

40. Plaintiff is informed and believes and thereupon alleges that, by committing the Labor Code violations described in this Complaint, Defendants violated Labor Code section 280. Defendants thus committed misdemeanors by violating the Labor Code as alleged herein.

41. Defendants have committed criminal conduct through their policies and practices of, *inter alia*, failing to comport with their affirmative obligations as an employer to reimburse them for all expenses.

42. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt employees and entitled to the full protections of both the Labor Code and the applicable Wage Order.

1       43. Defendants' unlawful conduct as alleged in this Complaint amounts to and  
 2 constitutes unfair competition within the meaning of Business and Professions Code section 17200  
 3 *et seq.*. Business and Professions Code sections 17200 *et seq.* protect against unfair competition  
 4 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of  
 5 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on  
 6 behalf of similarly situated persons in a class-action proceeding.

7       44. As a result of Defendants' violations of the Labor Code during the applicable  
 8 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form  
 9 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'  
 10 conduct.

11       45. Plaintiff is informed and believes that other similarly situated persons have been  
 12 subject to the same unlawful policies or practices of Defendants.

13       46. Due to the unfair and unlawful business practices in violation of the Labor Code,  
 14 Defendants have gained a competitive advantage over other comparable companies doing business  
 15 in the State of California that comply with their legal obligations.

16       47. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive  
 17 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act  
 18 that violates, or is considered unlawful under, any other state or federal law.

19       48. Accordingly, pursuant to Business & Professions Code section 17200 and 17203,  
 20 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining  
 21 Defendants, and each of them, and their agents and employees, from further violations of the Labor  
 22 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an  
 23 order permanently enjoining Defendants, and each of them, and their respective agents and  
 24 employees, from further violations of the Labor Code and applicable Industrial Welfare  
 25 Commission Wage Orders.

26       49. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of  
 27 himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully  
 28 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful

1 and unfair business practices.

2 50. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine  
 3 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover  
 4 reasonable attorneys' fees in connection with their unfair competition claims.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, prays for relief  
 7 and judgment against Defendants as follows:

- 8 (1) An order that the action be certified as a class action;
- 9 (2) An order that Plaintiff be appointed class representative;
- 10 (3) An order that counsel for Plaintiff be appointed class counsel;
- 11 (4) Actual damages;
- 12 (5) Liquidated damages;
- 13 (6) Restitution;
- 14 (7) Injunctive relief;
- 15 (8) Declaratory relief;
- 16 (9) Pre-judgment interest;
- 17 (10) Costs of suit;
- 18 (11) Reasonable attorneys' fees; and
- 19 (12) Such other relief as the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby  
 22 demands a jury trial on all issues so triable.

23 Dated: March 8, 2023

SETAREH LAW GROUP

25 */s/ Shaun Setareh*  
 26 SHAUN SETAREH  
 27 WILLIAM M. PAO  
 28 NOLAN DILTS  
 Attorneys for Plaintiff  
 SAUL REYES